IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 829 to 833 of 2004

With

FIRST APPEAL NO.834 TO 860 OF 2004

WITH

CIVIL APPLICATION No 2962 To 2966 of 2004

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

MOHANBHAI KALUBHAI PATEL THROUGH THE HEIRS & LRS

Appearance:
MR HL JANI, AGP, for the State Government
MR AMIT C NANAVATI for the Original Claimants

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.S.JHAVERI)

1. Heard the learned counsel for the respective parties. Appeals admitted. Mr.Amit C. Nanavati and Mr.HL Jani, learned AGP, waive service of notice for original claimants and State Government respectively.

2. On the joint request of learned counsel for the respective parties, these appeals are taken up for final hearing today.

3. Appeal Nos.834 to 860 of 2004 are at the instance of the original claimants and appeal nos.829 to 833 of 2004 are at the instance of the State Government under section 54 of the Land Acquisition Act read with section 96, CPC, challenging the common judgement and awards passed by the learned Assistant Judge, Mehsana, dated 3rd March 2003 in Land Acquisition Reference Nos.144/94 to 153/94 and 179/94 to 195/94, under section 18 of the said Act.

3.1 The lands in question were acquired for the purpose of Dharoi Canal Scheme work. The relevant notification under section 4 of the Act was published on 30.7.1990 and section 6 notification was published on 25.4.1991. The Land Acquisition Officer passed award under section 11 of the Act awarding Rs.1.30 and Rs.1.60 per square metre.

3.2 According to the claimants, the compensation awarded by the Land Acquisition Officer was totally inadequate and therefore they filed the aforesaid references before the Reference Court under section 18 of the said Act. The claimants have claimed a sum of Rs.20 per square metre.

3.3 The claimants contended before the Reference Court to the effect that the Land Acquisition Officer has not properly determined the prevailing market price; that he has not considered the documents of last five years prior to the date of publication of notification and previous judgement delivered by the competent court and that the claimants were taking three crops in a year

consisting of various agricultural produces. The claimants had further submitted that the lands belonging to them are of great potentiality and fetched more value and hence the actual market value of the acquired lands had gone up.

3.4 On behalf of the State Government the Government Pleader resisted the claim of the claimants and contended that the award of the Land Acquisition Officer is quite just and proper.

3.5 The Reference Court, after appreciation of the evidence on record, determined the market value of the land at the rate of Rs.14/- per square metre inclusive of the compensation already awarded by the Special Land Acquisition Officer. However, the order of the Reference Court held that the claimants are not entitled to get interest on the amount awarded under section 23(2) and 23(1-A) of the Act and also not entitled for solatium on the additional amount under Section 23(1)(A) of the Act.

4. Feeling aggrieved by non-grant of interest on the awarded amount under section 23(2) and 23(1-A) of the said Act the claimants have filed First Appeal Nos.834/2004 to 860/2004, whereas feeling aggrieved by the enhanced compensation the State Government has filed First Appeal Nos.829/2004 to 833/2004.

5.1 We have heard the learned counsel for the respective parties and carefully perused the impugned judgement and awards. We have also perused the oral and documentary evidence on record to which our attention has been drawn.

5.2 The only contention raised on behalf of the original claimants is that in the award the Reference Court has not awarded interest on the amount which was awarded under sections 23(2) and 23(1-A) of the Act. Learned counsel for the original claimants has submitted that in view of the judgement of the Supreme Court in the case of N.I. Trust Vs. Vasant Rao, reported in 2002(7) SCC 657 [= AIR 2002 SC 3499 = 2003(1) GLH 140] the claimants are entitled to get interest on the amount payable to them under sub-section (1-A) or section 23 of the said Act. Mr. H.L. Jani, learned AGP, has fairly conceded that the claimants are entitled to interest on the amount awarded under section 23(1-A) and (2) of the said Act. We, therefore, hold that the claimants are entitled to interest on the amount awarded under section 23(1-A) & (2) of the said Act.

5.3 Mr. HL Jani, learned AGP for the State Government contended that the Reference Court has committed an error in enhancing the compensation. He submitted that the Land Acquisition Officer had passed the award after taking into consideration all the factors and documents of last five years prior to the date of publication of the notification under section 4 of the said Act. He further submitted that the surrounding lands of the acquired lands were not developed and therefore there was no justification for enhancing the compensation at the hands of the Reference Court.

5.4 On behalf of the claimants it was deposed that they are having good potential land and that all the claimants were taking three crops in a year consisting of various agricultural produces. The Reference Court has appreciated the judgements in respect of the lands situated in the sim of villages Ranchhodpura and Dasaj wherein the very same court has awarded Rs.10 and Rs.12 per square metre respectively.

5.5 While determining the market value the Reference Court has relied upon the decision of this Court in the case of Special Land Acquisition Officer, Kaira Vs. Shantibhai Jivabhai Patel, reported in 1993(2) GLR page 1289, wherein it was held that the market value be considered by the authority as on the date of publication of Notification under section 4 of the said Act. The Reference Court has also relied upon a decision of the Supreme Court in the case of State of Madras Vs. A.M. Nanjan and others, reported in AIR 1996 page 473 wherein it is held that an award passed by a competent court, if comparable, would be relevant for fixation of the compensation and even if that award relates to the land in nearby area or town, it can be considered comparable having regard to reasonable proximity. Further, the Reference Court has considered the decision in the case of Second Addl. L.A. Officer Vs. Chunilal, reported in 1999(2) GLR 1357 wherein it is held that the decision of the Reference Court given in earlier case is a relevant and material piece of evidence for the purpose of determining compensation to be awarded in other cases. The same view is also taken by the Apex Court in the case of Karan Singh and Ors. Vs. Union of India, reported in 1997 (8) SCC 186 and in the case of Bhim Singh Vs. State of Haryana, reported in 2003(10) SCC 529. Keeping in mind the aforesaid principles the Reference Court held that the Land Acquisition Officer would have considered the increase in price every year of the agricultural land.

5.6 The Reference Court has considered the judgements produced at Exhs.10 to 12 pertaining to the lands situated in the sim of village Ranchhodpura and Dasaj. In all those judgements the very same Court has fixed the compensation at Rs.10/- and Rs.12/- per square metre. It was established that the village Karanpur is situated between the villages Upera, Karali and Ranchhodpura.

5.7 Therefore the Reference Court has rightly relied upon the aforesaid judgement in respect of the neighbouring lands for determining the market value of the acquired lands. Those judgements have attained finality inasmuch as the State has not filed any appeal against the said judgements. While dealing with the matter the Reference Court has also relied upon a decision in the case of Special Land Acquisition Officer, Bharuch Vs. Motibhai Mohanbhai, reported in 1997(2) GLH 773 wherein it is held that the Court has to adopt 10% rise in price of the agricultural lands per year. There is no dispute that the notifications in the case of previous acquired lands were published in the year 1983 and 1988, whereas in the present case the notification under section 4 of the Act was published in the year 1990. Therefore there is a gap of about five years between the publication of the notifications and therefore the Reference Court has rightly come to the conclusion that the claimants are entitled for 10% rise per year, on the basis of which the market value came to Rs.16/- per square metre. The Reference Court has deducted Rs.2/- from the said determination and awarded only Rs.14/- per square meter.

5.8 Under the aforesaid circumstances, we are satisfied that the Reference Court has not committed any error in awarding Rs.14/- per square meter and therefore we do not find any merits in the appeals filed by the State Government.

6.1 In the result, the appeals filed by the original claimants are partly allowed. It is held that the claimants are entitled to get interest on the amount awarded under section 23(1-A) and (2) of the Act.

6.2 The common judgement and award of the Reference Court is modified to the aforesaid extent. Decree shall be drawn accordingly. No order as to costs.

6.3 The appeals filed by the State Government are dismissed. No order as to costs.

7. Since the appeals have been disposed of, the

above civil applications do not survive and are accordingly disposed of.

[KSHITIJ R. VYAS, J.]

[K.S. JHAVERI, J.]

ar